

REFERENCE TITLE: dependent children; successor permanent guardianships

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

## **HB 2764**

Introduced by  
Representatives Hershberger, Bradley, Rios P, Senator Rios:  
Representatives Anderson, Burns J, Murphy, Tobin, Senators Gray L,  
Huppenthal, Johnson

### AN ACT

AMENDING SECTIONS 8-814 AND 8-871, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-874;  
RELATING TO DEPENDENT CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 8-814, Arizona Revised Statutes, is amended to  
3 read:

4       8-814. Permanent guardianship subsidy: offsets;  
5                   discontinuation; annual review; appeals; definition

6       A. The department of economic security shall establish and administer  
7 an ongoing program of subsidized permanent guardianship. Subsidies shall be  
8 provided from monies appropriated to the department or made available to it  
9 from other sources for permanent guardianship purposes.

10     B. The department may provide a subsidy to an applicant on behalf of a  
11 child subject to the requirements of this section.

12     C. An applicant is not eligible for a subsidy until the applicant  
13 demonstrates that the child or a responsible person on behalf of the child  
14 has applied for all benefits to which the child is entitled from other state  
15 or federal programs.

16     D. The department shall determine the appropriate amount of the  
17 subsidy, which shall not exceed the maintenance payment allowable for  
18 an adoption subsidy pursuant to chapter 1, article 2 of this title. The  
19 amount of the subsidy shall be offset by benefits received pursuant to the  
20 programs described in subsection C of this section.

21     E. The department shall conduct an annual review of a subsidy to  
22 determine that the permanent guardian continues to be eligible for the  
23 subsidy and that the subsidy is for the appropriate amount.

24       F. A permanent guardian who is receiving a subsidy shall:

25           1. Cooperate with the department in the annual review process.

26           2. Notify the department in writing of any change:

27           (a) That would lead to discontinuance of the subsidy pursuant to  
28 subsection E of this section.

29           (b) In benefits being received from programs described in subsection C  
30 of this section within two weeks of the change.

31           (c) In address within two weeks of the change.

32       G. The department shall discontinue a subsidy if any of the following  
33 occurs:

34           1. The permanent guardianship terminates.

35           2. The child dies or does not reside with the permanent guardian.

36           3. The child reaches eighteen years of age, except that the department  
37 may continue the subsidy until the child's twenty-second birthday if the  
38 child is enrolled in and regularly attending school and has not received a  
39 high school diploma or certificate of equivalency.

40           4. The applicant fails to comply with any requirement in this section.

41       H. Any decision denying, reducing or terminating a permanent  
42 guardianship subsidy is appealable pursuant to title 41, chapter 6 and  
43 chapter 14, article 3.

1       I. Notwithstanding section 41-3102, this program does not include a  
2 specific expiration date.

3       J. For the purposes of this section, "applicant" means a person who is  
4 appointed as a permanent guardian pursuant to section ~~8-525.01~~ 8-872 OR AS A  
5 PROVISIONAL OR SUCCESSOR PERMANENT GUARDIAN PURSUANT TO SECTION 8-874 and who  
6 applies for a subsidy pursuant to this section.

7       Sec. 2. Section 8-871, Arizona Revised Statutes, is amended to read:

8       **8-871. Permanent guardianship of a child**

9       A. The court may establish a permanent guardianship between a child  
10 and the guardian if the prospective guardianship is in the child's  
11 best interests and all of the following apply:

12       1. The child has been adjudicated a dependent child.

13       2. The child has been in the custody of the prospective permanent  
14 guardian for at least nine months as a dependent child. The court may  
15 waive this requirement for good cause.

16       3. If the child is in the custody of the division or agency, the  
17 division or agency has made reasonable efforts to reunite the parent and  
18 child and further efforts would be unproductive. The court may waive this  
19 requirement if it finds that reunification efforts are not required by law or  
20 if reunification of the parent and child is not in the child's best interests  
21 because the parent is unwilling or unable to properly care for the child.

22       4. The likelihood that the child would be adopted is remote or  
23 termination of parental rights would not be in the child's best interests.

24       B. The court may consider any adult, including a relative or foster  
25 parent, as a permanent guardian. An agency or institution may not be a  
26 permanent guardian. The court shall appoint a person nominated by the child  
27 if the child is ~~fourteen or more~~ AT LEAST TWELVE years of age, unless the  
28 court finds that the appointment would not be in the child's best interests.  
**THE COURT SHALL CONSIDER THE CHILD'S OBJECTION TO THE APPOINTMENT OF THE**  
**PERSON NOMINATED AS PERMANENT GUARDIAN.**

29       C. In proceedings for permanent guardianship, the court shall give  
30 primary consideration to the physical, mental and emotional needs of the  
31 child.

32       D. Unless otherwise set forth in the final order of permanent  
33 guardianship, a permanent guardian is vested with all of the rights and  
34 responsibilities set forth in section 14-5209 relating to the powers and  
35 duties of a guardian of a minor, other than those rights and responsibilities  
36 of the birth or adoptive parent, if any, that are set forth in the decree of  
37 permanent guardianship.

38       E. The division or agency shall not be responsible for **THE**  
39 requirements pursuant to subsection A, paragraph 3 of this section for a  
40 petition concerning a child not in the care, custody and control of the  
41 division or agency.

1        Sec. 3. Title 8, chapter 10, article 5, Arizona Revised Statutes, is  
2 amended by adding section 8-874, to read:

3        8-874. Appointment of successor permanent guardian

4        A. WHEN A PERMANENT GUARDIAN APPOINTED PURSUANT TO SECTION 8-872 HAS  
5 DIED OR IS UNABLE OR UNWILLING TO CONTINUE TO SERVE AS PERMANENT GUARDIAN, AN  
6 INTERESTED PARTY MAY FILE A MOTION FOR APPOINTMENT OF A SUCCESSOR PERMANENT  
7 GUARDIAN. THE MOTION SHALL BE VERIFIED BY THE PERSON FILING THE MOTION AND  
8 SHALL INCLUDE THE FOLLOWING:

9            1. THE NAME, SEX, ADDRESS AND DATE AND PLACE OF BIRTH OF EACH CHILD  
10 WHO IS THE SUBJECT OF THE MOTION.

11            2. THE NAME AND ADDRESS OF THE PERMANENT GUARDIAN.

12            3. THE REASON WHY THE PERMANENT GUARDIAN IS NO LONGER ABLE OR WILLING  
13 TO SERVE AS PERMANENT GUARDIAN OF THE CHILD.

14            4. THE NAME AND ADDRESS OF THE PROPOSED SUCCESSOR PERMANENT GUARDIAN,  
15 IF ANY.

16            B. THE MOTION SHALL BE ACCCOMPANIED BY AN AFFIDAVIT BY THE PROPOSED  
17 SUCCESSOR PERMANENT GUARDIAN THAT STATES:

18            1. THE RELATIONSHIP BETWEEN THE PROPOSED SUCCESSOR PERMANENT GUARDIAN  
19 AND THE CHILD.

20            2. THE PROPOSED SUCCESSOR GUARDIAN'S AGREEMENT TO ASSUME THE DUTIES  
21 AND RESPONSIBILITIES OF PERMANENT GUARDIAN, INCLUDING COMPLIANCE WITH ALL  
22 COURT ORDERS.

23            C. ON THE FILING OF A MOTION PURSUANT TO SUBSECTION A OF THIS SECTION,  
24 THE COURT SHALL:

25            1. SET A DATE FOR AN INITIAL GUARDIANSHIP REVIEW HEARING WITHIN THIRTY  
26 DAYS AFTER THE MOTION IS FILED.

27            2. APPOINT AN ATTORNEY FOR THE CHILD AND APPOINT AN ATTORNEY FOR THE  
28 PROPOSED SUCCESSOR GUARDIAN, IF NECESSARY. THE COURT IS NOT REQUIRED TO  
29 APPOINT AN ATTORNEY FOR THE PARENT OF THE CHILD.

30            3. ENTER TEMPORARY ORDERS, WHICH MAY INCLUDE:

31            (a) PLACING THE CHILD IN THE TEMPORARY CUSTODY OF AN INDIVIDUAL OR  
32 AGENCY OR THE DIVISION AND DIRECTING THE DIVISION TO PROVIDE NECESSARY  
33 SERVICES AS MAY BE NECESSARY FOR THE SAFETY AND WELL-BEING OF THE CHILD.

34            (b) DIRECTING THE DIVISION TO COMPLETE A CRIMINAL HISTORY BACKGROUND  
35 CHECK AND HOME STUDY TO DETERMINE THE SUITABILITY OF THE PROPOSED SUCCESSOR  
36 PERMANENT GUARDIAN TO SERVE AS THE PERMANENT GUARDIAN OF THE CHILD.

37            (c) DIRECTING THE DIVISION TO CONDUCT AN INVESTIGATION TO DETERMINE  
38 WHETHER DEPENDENCY PROCEEDINGS SHOULD BE INITIATED.

39            D. THE COURT SHALL ORDER THE PERSON FILING THE MOTION TO GIVE NOTICE  
40 OF THE HEARING AND TO PROVIDE A COPY OF THE MOTION TOGETHER WITH THE COURT'S  
41 TEMPORARY ORDERS TO THE PERMANENT GUARDIAN, THE DIVISION, THE CHILD'S  
42 ATTORNEY, THE CHILD'S PARENTS AND ANY OTHER INTERESTED PERSON AS ORDERED BY  
43 THE COURT. THE PERSON FILING THE MOTION SHALL PROVIDE NOTICE BY FIRST CLASS  
44 MAIL UNLESS THE COURT ORDERS THAT NOTICE BE GIVEN BY OTHER MEANS. IF THE  
45 CHILD IS SUBJECT TO THE INDIAN CHILD WELFARE ACT OF 1978, THE PERSON FILING

1 THE MOTION SHALL PROVIDE NOTICE, PURSUANT TO 25 UNITED STATES CODE SECTION  
2 1912, TO THE INDIAN PARENT, THE INDIAN CUSTODIAN AND THE CHILD'S TRIBE. IF  
3 THE IDENTITY OR LOCATION OF THE INDIAN CHILD'S PARENT CANNOT BE DETERMINED,  
4 THE PERSON FILING THE MOTION SHALL PROVIDE NOTICE TO THE UNITED STATES  
5 SECRETARY OF THE INTERIOR PURSUANT TO 25 UNITED STATES CODE SECTION 1912.

6 E. IF THE CHILD IS AT LEAST TWELVE YEARS OF AGE, THE COURT SHALL  
7 CONSIDER THE CHILD'S OBJECTION TO THE APPOINTMENT OF THE PERSON NOMINATED AS  
8 A SUCCESSOR PERMANENT GUARDIAN.

9 F. AT THE HEARING, IF THE COURT FINDS THAT THE PROPOSED SUCCESSOR  
10 PERMANENT GUARDIAN IS SUITABLE TO ASSUME THE RESPONSIBILITIES OF PERMANENT  
11 GUARDIAN AND THAT APPOINTMENT WOULD BE IN THE CHILD'S BEST INTERESTS, THE  
12 COURT SHALL GRANT THE MOTION, TERMINATE THE APPOINTMENT OF THE CURRENT  
13 PERMANENT GUARDIAN AND ENTER ANY OTHER ORDERS AS MAY BE NECESSARY FOR THE  
14 SAFETY AND WELL-BEING OF THE CHILD, INCLUDING:

15 1. APPOINTING THE PROPOSED SUCCESSOR PERMANENT GUARDIAN AS A  
16 PROVISIONAL PERMANENT GUARDIAN OF THE CHILD FOR A PERIOD NOT TO EXCEED NINE  
17 MONTHS AND SETTING A HEARING TO DETERMINE WHETHER THE APPOINTMENT SHOULD BE  
18 MADE PERMANENT.

19 2. APPOINTING THE PROPOSED SUCCESSOR PERMANENT GUARDIAN AS PERMANENT  
20 GUARDIAN OF THE CHILD IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE  
21 THAT THE PROPOSED SUCCESSOR PERMANENT GUARDIAN IS SUITABLE TO SERVE AS THE  
22 CHILD'S PERMANENT GUARDIAN AND THAT THE APPOINTMENT WOULD BE IN THE BEST  
23 INTERESTS OF THE CHILD.

24 3. DIRECTING THE DIVISION TO MONITOR THE PLACEMENT DURING THE PERIOD  
25 OF PROVISIONAL APPOINTMENT AND TO PROVIDE NECESSARY SERVICES TO SUPPORT THE  
26 PROVISIONAL PLACEMENT, INCLUDING ASSISTING THE PROVISIONAL PERMANENT GUARDIAN  
27 TO MAKE AN APPLICATION FOR GUARDIANSHIP SUBSIDY AND OTHER AVAILABLE BENEFITS.

28 G. IF THE COURT ENTERS AN ORDER APPOINTING A SUCCESSOR PERMANENT  
29 GUARDIAN, THE COURT SHALL SET A REVIEW HEARING WITHIN ONE YEAR AFTER THE  
30 APPOINTMENT AND MAY ORDER THE DIVISION OR AN AGENCY TO CONDUCT AN  
31 INVESTIGATION AND SUBMIT A WRITTEN REPORT BEFORE THE HEARING.

32 H. A SUCCESSOR PERMANENT GUARDIAN IS VESTED WITH ALL OF THE RIGHTS AND  
33 RESPONSIBILITIES PRESCRIBED IN SECTION 14-5209 RELATING TO THE POWERS AND  
34 DUTIES OF A GUARDIAN OF A MINOR, OTHER THAN THOSE RIGHTS AND RESPONSIBILITIES  
35 OF A BIRTH OR ADOPTIVE PARENT PRESCRIBED IN THE ORDER APPOINTING THE  
36 SUCCESSOR PERMANENT GUARDIAN.

37 I. THE ORDER APPOINTING THE SUCCESSOR PERMANENT GUARDIAN MAY PROVIDE  
38 FOR CONTACT BETWEEN THE CHILD AND THE NATURAL OR ADOPTIVE PARENTS, SIBLINGS  
39 AND OTHER RELATIVES OR KIN IF CONTACT IS IN THE CHILD'S BEST INTERESTS. THE  
40 COURT MAY ORDER THE PARENT TO CONTRIBUTE TO THE SUPPORT OF THE CHILD AND TO  
41 PAY ANY COSTS FOR VISITATION TO THE EXTENT IT FINDS THE PARENT ABLE TO  
42 CONTRIBUTE.

1       J. IF THE MOTION TO APPOINT A SUCCESSOR PERMANENT GUARDIAN DOES NOT  
2 COMPLY WITH THIS SECTION, OR IF THE COURT DOES NOT APPOINT A PROVISIONAL OR  
3 PERMANENT SUCCESSOR PERMANENT GUARDIAN, THE COURT MAY ORDER THE DIVISION OR  
4 THE CHILD'S ATTORNEY TO FILE A DEPENDENCY PETITION REGARDING THE CHILD AND  
5 MAY ENTER TEMPORARY ORDERS AS MAY BE NECESSARY FOR THE SAFETY AND WELL-BEING  
6 OF THE CHILD. IN THESE CASES, THE COURT MAY DIRECT THE DIVISION NOT TO  
7 PROVIDE REUNIFICATION SERVICES TO THE CHILD'S PARENTS UNLESS THE COURT FINDS  
8 BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD BE IN THE CHILD'S BEST  
9 INTERESTS.